

A **BURSA MALAYSIA SECURITIES BHD v. TENGKU DATO'
KAMAL IBNI SULTAN SIR ABU BAKAR & ORS**

HIGH COURT MALAYA, KUALA LUMPUR

ABU BAKAR JAIS J

[ORIGINATING SUMMONS NO: D-24NCC-168-2010]

B 9 NOVEMBER 2016

C **CIVIL PROCEDURE:** *Judgments and orders – Committal order – Failure to honour orders by High Court and Court of Appeal – Whether committal proceeding proper – Whether there were merits in contention to resist order for committal – Rules of Court 2012, O. 45 r. 5(1)*

CIVIL PROCEDURE: *Appeal – Appeal against order – Committal order stemming from failure to honour orders by High Court and Court of Appeal – Whether appeal made within period specified under r. 12 of Rules of the Court of Appeal 1994*

D The plaintiff applied for an order of committal against the first, second and fourth defendants ('the defendants') as they had disobeyed an earlier order given by the High Court in favour of the plaintiff and largely affirmed by the Court of Appeal ('the two courts' orders'). In resisting the plaintiff's application, the defendants argued that (i) the committal proceeding was improper as there were orders made earlier and unknown to the said defendants affecting the case itself upon which the two courts' orders were made; (ii) there was a consent judgment recorded by the relevant parties including the defendants that had settled the orders of the High Court; (iii) committal proceeding was wrongly undertaken by the plaintiff without full disclosure to the court regarding the consent judgment already recorded; F (iv) the plaintiff had no jurisdiction to take action which resulted in the two courts' orders; and (v) the plaintiff's action was sub-judice and prejudicial to the defendants as the company itself, where the defendants were ordered to make payments to by the two courts' orders, had undertaken and initiated the suit against the defendants.

G **Held (allowing application):**

H (1) There were no merits in the contention of the defendants resisting the order for committal. The two courts' orders were not complied with and obeyed by the defendants. An order of committal was issued against the defendants pursuant to O. 45 r. 5(1) of the Rules of Court 2012 ('the ROC'). (paras 13 & 17)

I (2) It was too late in the day for the defendants to challenge the main case by questioning the substantive suit itself that had resulted in the two courts' orders. The merits of the defendants' defence in the substantive case should have been raised before the two courts' orders were pronounced. It was not the duty of the court to now consider the merits of the defendants' defence in the main case. With the issuance of the two

courts' orders, it was apparent that the defendants had lost the main suit initiated by the plaintiff against them. The two courts' orders were final in nature, requiring the defendants to follow and comply the same. (paras 18 & 19)

- (3) The first and second defendants were each sentenced to a fine of RM2 million from the date of sentencing and in default, 30 days imprisonment. The fourth defendant was sentenced to a fine of RM100,000 from the date of sentencing and in default, 14 days imprisonment. The sentences were appropriate and reasonable having regard to the fact that the defendants refused to obey the two courts' orders. The sentences also took into account the huge sums imposed on the defendants. (paras 20 & 21)

- (4) The defendants could not proceed at the Court of Appeal with the appeal against the order of committal given by the court because they were late in filing their appeal. The order for committal was given on 24 March 2016 and the defendants only appealed against the same at the Court of Appeal on 26 July 2016. Under r. 12 of the Rules of the Court of Appeal 1994, the defendants have only one month from the order of committal. They were clearly out of time for about four months to appeal against the order of committal. They could only proceed with the appeal in respect of the sentence imposed. (paras 22 & 26)

Case(s) referred to:

Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd [2001] 4 CLJ 549 CA (*refd*)
Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 CLJ 401 FC (*refd*)
Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC (*refd*)

Legislation referred to:

Rules of Court 2012, O. 45 r. 5(1)
 Rules of the Court of Appeal 1994, r. 12

For the plaintiff - Lee Shih & Nimalan Devaraja; M/s Skrine
For the defendants - Jasbeer Singh Banta Singh; M/s Jasbeer Nur & Lee

Reported by Najib Tamby

JUDGMENT

Abu Bakar Jais J:

Introduction

[1] This is the application of the plaintiff for an order of committal against the first, second and fourth defendants pursuant to leave given earlier by this court. The present order is requested as all three defendants had disobeyed an earlier order given by the High Court in favour of the plaintiff and affirmed largely by the Court of Appeal, except to extent the time of payment of certain sum ordered by the said High Court.

A Background Facts

[2] The relevant part of the High Court's order is as follows:

- B** (a) bahawa defendan pertama hendaklah membayar kepada plaintiff jumlah sebanyak RM1,000,000 (Ringgit Malaysia Satu Juta) di dalam tempoh tiga puluh (30) hari dari tarikh perintah ini;
- C** (b) bahawa defendan ke-2 hendaklah membayar kepada plaintiff jumlah sebanyak RM1,000,000 (Ringgit Malaysia Satu Juta) di dalam tempoh tiga puluh (30) hari dari tarikh perintah ini;
- C** (c) bahawa defendan Ke-3 hendaklah membayar kepada plaintiff jumlah sebanyak RM500,000 (Ringgit Malaysia Lima Ratus Ribu) di dalam tempoh tiga puluh (30) hari dari tarikh perintah ini;
- D** (d) bahawa defendan Ke-4 hendaklah membayar kepada plaintiff jumlah sebanyak RM500,000 (Ringgit Malaysia Lima Ratus Ribu) di dalam tempoh 30 hari dari tarikh perintah ini;
- D** (e) bahawa di dalam tempoh tiga puluh (30) hari dari tarikh perintah ini, defendan pertama dan Ke-2, bersesama dan berasingan, memulangkan balik kepada Cepatwawasan Group Berhad RM13,000,000 yang dibayar kepada Opti Temasek Sdn Bhd;
- E** (f) bahawa di dalam tempoh tiga puluh (30) hari dari tarikh perintah ini, defendan-defendan, bersesama dan berasingan, memulangkan balik kepada Cepatwawasan Group Berhad RM3,000,000 yang dibayar kepada Sheikh Abdul Rahim bin Sheikh Hassan;
- F** (g) bahawa plaintiff diberi kebebasan untuk memohon untuk arahan-arahan daripada Mahkamah Yang Mulia ini untuk penyampaian perintah ke atas defendan-defendan dan untuk apa-apa perlanjutan masa untuk penyampaian itu;
- F** (h) bahawa defendan-defendan hendaklah membayar kepada plaintiff kos sebanyak RM20,000 (Ringgit Malaysia Dua Puluh ribu).

[3] The material part of the Court of Appeal's order affirming the High Court's order is as follows:

- G** (a) Rayuan ditolak dengan kos sebanyak RM20,000.00 (Ringgit Malaysia Dua Puluh Ribu Sahaja) dibayar oleh Perayu-Perayu kepada Responden;
- H** (b) Perintah Mahkamah Tinggi bertarikh 28-12-2010 diubah untuk memperuntukkan bahawa kesemua pembayaran dan tindakan yang dinyatakan dalam perintah itu akan dibuat dalam tempoh tiga puluh (30) hari dari tarikh perintah ini;

dan
- I** (c) Deposit dibayar kepada Responden ke akaun kos yang telah ditetapkan.

I Plaintiff's Submission

[4] In brief, the plaintiff submits that since the said defendants had failed to honour both judgments by the High Court and Court of Appeal, the order of committal ought to be granted against the latter.

[5] There is no dispute the said defendants are fully aware of these two courts' orders and there is no dispute that the defendants were served with the relevant cause papers for the committal proceeding.

A

Defendants' Submission

[6] The said defendants' contention can be summarised as follows.

B

[7] The committal proceeding now is improper as there are orders that were made earlier and unknown to the said defendants affecting the case itself upon which the orders of the High Court and Court of Appeal were made.

[8] There is a consent judgment which was recorded by the relevant parties including the said defendants that had settled the two orders of the High Court and Court of Appeal.

C

[9] The committal proceeding was also wrongly undertaken by the plaintiff without full disclosure to this court regarding the consent judgment already recorded.

D

[10] The contention of the plaintiff regarding the suit itself that resulted in the two courts' orders is highly disputed.

[11] The plaintiff has no jurisdiction to take action in the first place that has resulted in the two courts' orders.

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[12] The action of the plaintiff is sub-judice and prejudicial to the said defendants as the company itself, where the defendants were ordered to make payments to by the two courts' orders, had undertaken and initiated the suit against the defendants.

Court's Findings

F

The Law

[13] Since there is no dispute that the two orders from the High Court and Court of Appeal have not been complied and obeyed by the said defendants, I am now exercising my power to issue an order of committal against the said defendants pursuant to O. 45 r. 5(1) of the Rules of Court 2012 ("ROC") that states:

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Where a person required by a judgment or order to do an act within a time in the judgment or order refuses or neglects to do it within that time then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:

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(A) with the leave of the Court, an order for committal.

[14] Further, in *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210; [1993] 2 MLJ 217 it is said:

I

It is established law that a person against whom an order of court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience

A until such time as the order may be set aside or varied. Any person who fails to obey an Order of Court runs the risk of being held in contempt with all its attendant consequences.

[15] While in the Court of Appeal's case of *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549 it is said:

B It is true that courts should be slow to punish a person for contempt. But that does not mean that the courts should sit with folded arms, engrossed with legal theories whilst parties in the proceedings are removing the subject matter of the claim to defeat the making of the order that the court would and might make and to reduce the order, if and when made, to no more than a paper judgment, as had happened in this case. Interest of individuals is to be respected, yes, but not that of dishonest individuals. And, when the interest of justice and of the public come face to face with the interest of individuals, the former must prevail. Otherwise, the public will lose confidence in the courts. If the courts and the administration of justice are to be respected, the courts must ensure that their judgments are effective. Judgments are not mere literary works. No matter how learned they are and how well they are written, if they cannot deliver the goods, they are of no use. Taking all the circumstances of this case, it is very clear to us that the acts complained of are a blatant interference with the due administration of justice or the course of justice that the perpetrators should be punished with contempt of the court.

E [16] The Court of Appeal's judgment was upheld by the Federal Court in *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401; [2002] 4 MLJ 241, where it is said:

F Following the principle, *Oswald's Contempt of Court* (3rd Ed) provides a good guide to a general definition of contempt of court, thus:

G To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during litigation.

G What therefore is contempt of court, 'is interference with the due administration of justice' - per Nicholls LJ at p 923 of *Attorney-General v. Hislop & Anor* [1991] 1 All ER 911 (CA).

H In view of the generality of the phrase 'interference with the due administration of justice', we are of the view that the categories of contempt are never closed. To that extent we respectfully endorse the statement made by Low Hop Bing J, in *Chandra Sri Ram v. Murray Hiebert* [1997] 3 MLJ 240 at 270:

I The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item,

report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of sub judice matters, civil or criminal, for the time being pending in any court. The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.

A

B

Defendants' Arguments

[17] I find that there are no merits in the contention of the said defendants resisting the order for committal for the following reasons.

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[18] First, it is clear the arguments of the said defendants as narrated earlier sought to question the substantive suit itself that has resulted in the two courts' orders. It is too late in the day now for the said defendants to challenge the main case. The merits of the defence of the said defendants in the substantive case itself should have been raised before the orders were pronounced by the High Court and Court of Appeal respectively. With the issuance of the two courts' orders, it is apparent the said defendants had lost the main suit initiated by the plaintiff against them.

D

E

[19] It is not the duty of this court now to consider the merits of the defence of the said defendants in the main case. That had already been decided by the High Court and Court of Appeal earlier. This court is only concerned whether the said defendants had obeyed the two courts' orders arising from the substantive suit itself. And these orders are final in nature requiring the said defendants to follow and comply with the same.

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The Sentence

[20] Having decided that the order of committal ought to be given against the said defendants, I had sentenced the said defendants as follows:

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- (a) a fine of RM2 million on the first defendant to be paid within 90 days from the date of sentencing and in default 30 days' imprisonment;
- (b) a similar fine also on the second defendant to be paid within 90 days from the date of sentencing and in default 30 days' imprisonment; and
- (c) a fine of RM100,000 on the fourth defendant to be paid within 90 days from the date of sentencing and in default 14 days' imprisonment.

H

[21] I find that these sentences are appropriate and reasonable having regard to the fact that the said defendants had refused to obey the two courts' orders. These sentences also took into account the huge sums imposed to be paid by the said defendants as narrated earlier in the High Court's order and affirmed by the Court of Appeal's order.

I

A *The Defendants Are Late In Appealing*

- [22] The order for committal was given by this court on 24 March 2016. After that, the case was adjourned to another date for submission on sentencing. Thereafter, the sentence for the committal against the said defendants was pronounced by this court on 1 July 2016 after submission on
- B sentencing. The said defendants only lodged the appeal to Court of Appeal to challenge this court's decision on 26 July 2016. It is clear under r. 12 of the Rules of the Court of Appeal 1994, the said defendants have only one month from the order of committal, which as stated, was given by this court on 24 March 2016 to appeal to the Court of Appeal. Since they only filed
- C their appeal on 26 July 2016, it is clear they are out of time for about four months to appeal against the order of committal. They can only proceed with the appeal at the Court of Appeal against the sentence imposed by this court. They cannot wait until 26 July 2016 to file the notice of appeal as there are two different decisions in respect of this committal case, one for the
- D finding of committal itself and the other for decision on sentence. They should have filed two separate notices of appeal, one for the order of committal and the other against the sentence pronounced.

Conclusion

- E [23] The plaintiff had proven its case for the order of committal. There are as clearly seen two courts' orders from the High Court and Court of Appeal which were not obeyed by the said defendants. No reasons were given why these orders were not complied by the said defendants. In fact, there is no dispute these orders were not obeyed.
- F [24] The arguments of the said defendants objecting to the committal order only raised issues affecting the main suit itself upon which the two courts were given. The substantive suit has already been decided by the issuance of the two courts' orders. Therefore, it is clearly too late and irrelevant for the said defendants to bring these issues only now since the two orders had been issued after a full trial and after appeal.
- G [25] The sentence imposed and meted out by this court against the said defendants is fair, reasonable and commensurate with the non-compliance of the two courts' orders.
- H [26] The said defendants also cannot proceed at the Court of Appeal with the appeal against the order of committal given by this court because they are late in filing their appeal. They can only proceed with the appeal in respect of the sentence imposed by this court.
- I [27] For all the reasons elaborated as aforesaid, the order of committal and sentence is given by this court accordingly.
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